

TECHNICAL ASSISTANCE - EMPLOYMENT ELIGIBILITY VERIFICATION FORM I-9

Prepared by the Division of Human Resources in the Department of Personnel & Administration. Revised February 2006.

GENERAL

The Immigration Reform and Control Act (IRCA) of 1986 was passed to help control illegal immigration, with the belief that by making it more difficult for unauthorized aliens to get work, they would be less likely to enter the United States. IRCA placed a responsibility on employers to determine employment eligibility for each newly hired employee.

The IRCA was initially enforced by the Immigration and Naturalization Service (INS), but has recently been transitioned to the newly created Department of Homeland Security (DHS). The DHS bureau, U.S. Citizenship and Immigration Services (USCIS), oversees compliance.

The IRCA requires all U.S. employers to verify evidence of identity and employment eligibility of all newly hired employees. Within three business days of an employee's first day of employment, the employer must view acceptable documentation and the employee and employer must complete the Employment Eligibility Verification form (Form I-9). The employer, not the employee, is responsible for ensuring that the Form I-9 is timely and properly completed.

Completed Form I-9s are kept on file by the employer and made available for inspection by authorized U.S. Government officials (i.e. Immigrations and Customs Enforcement or Department of Labor).

DEFINITION OF AN EMPLOYEE

The Form I-9 must be completed for all newly hired employees. In the event of agency-to-agency transfers, the receiving agency must verify employment eligibility and complete the Form I-9 in the same manner as newly hired employees. Even though U.S. citizens and nationals are automatically eligible for employment in the U.S., they also must provide proof of employment eligibility. An employee must complete Section 1 of the Form I-9 on the first day of employment and provide appropriate identity and employment eligibility documentation within three business days of the date employment begins.

For I-9 purposes, a person is hired when he or she begins to work for an employer for wages or other compensation; not necessarily when a job offer is made or accepted. Other compensation includes anything of value in exchange for labor rendered by an employee, such as lodging and food. Therefore, volunteers may be classified as an employee for employment eligibility purposes if they are receiving some type of non-monetary compensation.

Employers do not need to complete Form I-9s for employees hired prior to November 7, 1986, who have continued employment, independent contractors, or persons who provide labor through a contractor providing contract services.

OBTAINING THE FORM I-9

The current version of the Employment Eligibility Verification form (Form I-9) is available online at <http://uscis.gov/graphics/formsfee/forms/files/i-9.pdf>. The form was most recently revised on May 31, 2005, to eliminate outdated references to the INS. Employers are allowed to make photocopies of this document, as long as both sides of the form are copied. The instructions must also be available to all employees completing the form.

COMPLETING THE FORM I-9

There are three sections of the Form I-9. The employee completes Section 1, and the employer completes Sections 2 and 3.

Section 1 (Employee)

- *Demographics.* The employee must indicate name, address, date of birth, and social security number.
- *Eligibility Classification.* An employee must indicate whether he or she is a citizen or national, a lawful permanent resident, or an alien with a temporary work authorization. Citizens include persons born in the United States, Puerto Rico, Guam, the U.S. Virgin Islands, or the Northern Mariana Islands. Nationals of the U.S. include persons born in American Samoa, including Swains Island.
- *Signature and Date.* The employee must sign and date Section 1 with the current date.
- *Preparer and/or Translator Certification.* This part should only be completed and signed if someone other than the employee prepared the employee's section.

Section 2 (Employer)

- *Employer Review and Verification.* The employer must examine the acceptable identity document(s) and complete the form by recording the document's title, issuing authority, document number, and expiration date (if any).
- *Certification.* The employer must verify the employee's first date of employment, certify completion of the employer's information, and date the form.

Section 3 (Employer – updates and reverification only)

- *Block A.* This part is for name changes only.
- *Block B, Signature and Date.* Employees rehired within three years, who are still eligible to work in the U.S. on the same basis as when initially hired, should complete this part.
- *Block B, C, Signature and Date.* This part must be completed for: (1) employees rehired within three years, whose initial work eligibility status has changed, or (2) current employees whose work authorization is about to expire (reverification).

ACCEPTABLE DOCUMENTATION

The Form I-9 lists acceptable documents that can be used to show identity and eligibility to work in the United States. An employer may not restrict this list or require seeing particular documents; the employee shall choose from the entire list of acceptable documents. Although a Social Security card is not required for Form I-9 requirements, each agency must obtain a copy

of the employee's Social Security card for other payroll requirements. Additional information on payroll requirements can be obtained from Central Payroll or the State Controller's Office.

An employee may either choose to provide one document from List A (which establishes both identity and employment eligibility), or choose two documents - one from List B (which establishes identity) and one from List C (which establishes employment eligibility). Only original documents are allowed; copies are not acceptable, with the only exception being a certified copy of a birth certificate.

Employers are not required to make photocopies of the original documentation provided, however, they have the option to do so. If an employer chooses to make photocopies of documentation, copies should be made consistently for every new employee, and stored with completed Form I-9s.

If an employee does not have acceptable original documents, he or she must apply for any needed replacement documents, and provide the receipt for the replacement document(s) within the initial three-day period.

AUTHENTICITY OF DOCUMENTS AND GOOD FAITH DEFENSE

Employers must examine all provided identity and employment eligibility documents to see if they reasonably appear on their face to be genuine and related to the employee. If so, the documents must be accepted. However, if a document does not reasonably appear genuine, or if it does not appear related to the employee presenting it, an employer must refuse the document. This can ultimately eliminate the employee's eligibility for employment.

As long as employers act in this manner, they will have "good faith" defenses against penalties and sanctions, in the event employees provide false or altered documents or are unauthorized aliens. Employers have good faith defenses unless they knowingly hire unauthorized aliens and have actual knowledge of the unauthorized work statuses of employees.

UPDATES AND REVERIFICATION

Employers must complete Section 3 of the Form I-9 when updating and/or reverifying the form. If the employee has a temporary work authorization when hired, employment eligibility must be reverified on or before the expiration date of this authorization. Similar to the new hire process, employers may not specify which document(s) they will accept.

The original Form I-9 must be reverified, and Section 3 completed, if an employee is rehired within three years of the date the original form was completed. Provided that an employee's eligibility status is the same as when initially hired, that employee does not need to complete a new Form I-9. If an employee's name changes, completion of Block A of Section 3 is required. It is not necessary for employees to complete new Form I-9s just because the USCIS releases a new version or edition of the form.

FAILURE TO PRODUCE DOCUMENTATION

Employers must examine evidence of identity and employment eligibility and complete Section 2 of the Form I-9 within three business days of the date employment begins. If an employee is unable to present the required document(s) within three days, he or she must present a receipt for the application of the document within this initial three-day period. In addition to providing the initial receipt, the employee must produce the actual replacement document for the employer within ninety days.

While the submission of the information required in the Form I-9 is voluntary, an individual may not continue employment unless this form is completed. Employers are subject to civil or criminal penalties if they do not comply with the IRCA.

CPPS SYSTEM ENTRY

Agencies are required to enter the expiration date(s) of the Form I-9 documentation in the Personal Data screen of CPPS. To ensure consistency, the expiration date of 99/99/9999 should be entered for all U.S. citizens or nationals. For all other work authorization statuses, the expiration date entered should reflect 30 days prior to the document's actual expiration date. This applies to permanent resident aliens, as well as employees with other Form I-9 statuses.

RECORDKEEPING AND FILING

Agencies keep completed Form I-9s on site; the forms are not to be forwarded to the DHS or the USCIS. Agencies must retain Form I-9s for either three years after the date of hire or one year after the date employment ends, whichever occurs later.

Although not required, it is suggested that completed forms be kept separately from an employee's personnel file. Commonly, Form I-9s are kept together alphabetically in a separate file. If photocopies are made of the documentation provided, these should be attached to the form, and kept together.

ADDITIONAL INFORMATION

The USCIS has released a *Handbook for Employers*, which includes detailed information about the employment eligibility process, and answers to frequently asked questions. The handbook can be found on line at http://uscis.gov/graphics/lawsregs/handbook/hand_emp.pdf.

Every attempt is made to keep this technical assistance updated. For more detailed information, refer to the *State Personnel Board Rules and Director's Administrative Procedures* or contact your department human resources office. Subsequent revisions to rule or law could cause conflicts in this information. In such a situation, the law and rule are the official source upon which to base a ruling or interpretation. This document is a guide, not a contract or legal advice.

**TECHNICAL ASSISTANCE
DHR APPROVAL FOR PUBLICATION**

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